IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1330 OF 2007

1. M/s. Al-can Exports Pvt. Ltd.
   Sheetal Industrial Estate,
   Kashimira Road, Bhayandar (E),
   District Thane.
2. Mr.Vijay Parikh,
   Director of M/s. Alcan Exports P.
   Ltd., Sheetal Industrial Estate,
   Kashimira Road, Bhayandar (E),
   District Thane.
3. Mrs. Nisha Vijay Parekh,
   Director of M/s. Al-can Exports Pvt. Ltd.
   Sheetal Industrial Estate,
   Kashimira Road, Bhayandar (E),
   District Thane.
4. Mr. Chetan L. Shah,
   C/o. Al-can Exports (P) Ltd.
   Shree Laxmi Woolen Mills
   Compound, Mahalaxmi, Mumbai. ...Petitioners

Vs.

1. State of Maharashtra,
   through Co-op. Department,
   Mantralaya, Mumbai-32.
2. Raghuwanshi Co-op.Bank Ltd.,
   through the Liquidator,
   having its registered office at
   276/286, Kilachand Mansion,
   Kalbadevi Road, Mumbai-2.
3. Mr. D.V. Badgujar,
   Retired Assistant Registrar,
   Co-op. Societies,
   C/o.Raghuwanshi Co-op.Bank Ltd.,
   through the Liquidator,

having its registered office at
276/286, Kilachand Mansion,
Kalbadevi Road, Mumbai-2.

4. Commissioner for Cooperation,
and Registrar, Co-op. Societies,
Maharashtra State, Pune. ...Respondents.

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Mr.M. M. Vashi for the Petitioners.
Mr.Shekhar Ingawale, AGP for Respondent Nos.1 & 2.
Mr. C.J. Sawant, Senior Advocate with Mr. Vishal C. Ghosalkar for Respondent No.3.

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CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 20, 2007.

JUDGMENT (Per D.Y. Chandrachud, J.) :

The Second Respondent was carrying on banking business in pursuance of a licence granted by the Reserve Bank of India under Section 22 of the Banking Regulation Act, 1949. The licence was cancelled by the Reserve Bank on 17th March 2005. On 19th March 2005, in exercise of powers conferred by Section 110-A(ii) of the Maharashtra Co-operative Societies' Act, 1960, the Commissioner for Co-operation passed an order of winding up and appointed a Liquidator in respect of the affairs of the Bank. By the order of the Commissioner, Shri B.M. Jadhav, Assistant Registrar,

Co-operative Societies, came to be appointed as Liquidator. Upon the retirement of Shri B.M. Jadhav, the Third Respondent, was appointed as Liquidator.

2. The Petitioners had obtained a loan from the Second Respondent. Recovery notices were issued by the Bank to which the reply of the Petitioners was that it was they who had suffered on account of the alleged non-disbursement of the loan which had been sanctioned, on account of the closure of the Bank. The Third Respondent instituted proceedings under Section 101 of the Maharashtra Co-operative Societies' Act, 1960. The contention of the Petitioners is that thereafter, the Third Respondent retired from service as an Assistant Registrar and that his appointment as a Liquidator must automatically be regarded as having come to an end. In the alternative, it has been submitted that the appointment of the Third Respondent was not notified in the Gazette as required under Rule 89(1) of the Maharashtra Co-operative Societies' Rules, 1961. The petition has accordingly been instituted under Article 226 of the Constitution of India for the issuance of an appropriate writ, setting

aside the proceedings instituted under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, and for a declaration that the Third Respondent is not entitled to act as Liquidator of the Bank.

3. An affidavit in reply has been filed in these proceedings on behalf of the First Respondent. It has been clarified therein that in pursuance of the directions issued by the Reserve Bank of India, Shri B.M. Jadhav, Assistant Registrar, Co-operative Societies, was initially appointed as a Liquidator on 19th March 2005. The Liquidator resigned and in his place, the Third Respondent came to be appointed as a Liquidator by an order dated 16th September 2005. At the relevant time, the Third Respondent was working as an Assistant Registrar, Co-operative Societies. Considering the progress made by the Third Respondent in his capacity as Liquidator, a decision was taken to continue his appointment even after his retirement as Assistant Registrar and accordingly, a letter was addressed by the Commissioner, Co-operation and Registrar of Co-operative Societies for the continuance of the Third Respondent as Liquidator. An order

was accordingly passed on 17th July 2007 by the Commissioner of Co-operation. Necessary directions were issued for publishing the orders of appointment in the Government Gazette on 17th July 2007. It has been urged that there is no provision in the Act or the Rules which bars the appointment of a retired officer as Liquidator and the Third Respondent was appointed having regard to his experience in the Co-operation Department. In so far as the Bank is concerned, it has been stated that in the year 2002, a financial scam was unearthed and in pursuance of the directions issued by the Reserve Bank of India, the existing Managing Committee came to be dissolved and a Board of Administrators was appointed to look after the affairs of the Bank from May 2002 to March 2005. On 17th March 2005, the Reserve Bank of India issued directions for the cancellation of the banking licence and for taking the Bank into liquidation. The Third Respondent, it has been submitted, has been duly empowered to file recovery proceedings under Section 105 of the Act. The Petitioners are stated to be defaulters to the extent of Rs. 1.23 crores. It has been urged that the Petition has been instituted only to stall the recovery proceedings.

4. The Third Respondent in his affidavit in reply has also pointed out that the Petitioners are the defaulters with dues in excess of Rs. 1.23 crores outstanding as on 31st December 2006, and it is open to the Petitioners to challenge the recovery certificate that may be issued in accordance with law. The proceedings have been instituted in exercise of powers vested in the Liquidator under Section 105(1)(a) of the Act.

5. Section 110-A(ii) of the Maharashtra Co-operative Societies Act, 1960 provides that in the case of an insured Co-operative Bank, an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in Section 13-D of the Deposit Insurance Corporation Act, 1961. Section 103(1) provides for the appointment of a Liquidator. Under sub-section (4) of Section 103, the Registrar is empowered to appoint another person in place of the Liquidator so appointed. The Liquidator is empowered to exercise all or any of the powers mentioned in Section 105, subject to the general control of the

Registrar. The powers conferred upon the Liquidator under sub-section (1) of Section 105 include in sub-clause (a) the power to institute and defend any suit and other legal proceedings, civil or criminal, on behalf of the Society. Rule 89 of the Maharashtra Co-operative Societies' Rules, 1961, requires that the appointment of the Liquidator shall be notified in the Official Gazette. In the present case, directions have been issued by the Commissioner of Co-operation, albeit belatedly, on 17th July 2007 for the publication of the appointment of the Liquidator in the Government Gazette. There is absolutely no substance in the contention of the Petitioners that the Third Respondent ceased to be entitled to act as Liquidator upon his retirement as Assistant Registrar. No such disqualification or bar is contained in the provisions of the Act or the Rules. There is merit in the submission urged on behalf of the Respondents that the Petitioners who had large outstandings due and owing to the Bank, would be entitled to follow such remedies as are open in law in the event that a recovery certificate is issued under Section 101 of the Act. The Petition is wholly lacking in substance and shall accordingly stand dismissed.

CHIEF JUSTICE

Dr.D.Y. CHANDRACHUD, J.